



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 28, 2004

Ms. Holly C. Lytle
Assistant County Attorney
El Paso County
500 East San Antonio, Room 503
El Paso, Texas 79901

OR2004-6339

Dear Ms. Lytle:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 206096.

The El Paso County Auditor's Office (the "county") received a request for six categories of information related to supplements paid to the El Paso County District Attorney and his staff and certain expenditures of the El Paso County District Attorney's Office. You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹ We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that person may submit comments stating why information should or should not be released).

Initially, we note that the responsive information includes the minutes of public meetings of the El Paso County Commissioners Court. The minutes, tape recordings, notices, and agendas of a governmental body's public meetings are specifically made public by statute, *see* Gov't Code §§ 551.022 (minutes and tape recordings), 551.043 (notice), and therefore may not be withheld from the public pursuant to section 552.103 of the Government Code.

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). Here, we do not address any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Information specifically made public by statute may not be withheld from the public under any of the Public Information Act's exceptions to public disclosure. *See, e.g.*, Open Records Decision Nos. 544 (1990), 378 (1983), 161 (1977), 146 (1976). Accordingly, the county must release the marked minutes.

Additionally, we note that the remaining responsive information consists of documents that are subject to section 552.022 of the Government Code. Section 552.022 provides that

the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

...

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body;

...

(5) all working papers, research material, and information used to estimate the need for or expenditure of public funds or taxes by a governmental body, on completion of the estimate[.]

The remaining information consists of information in an account, which is expressly public under section 552.022(a)(3), and information used to estimate the need for or expenditure of public funds, which is made public pursuant to section 552.022(a)(5). You argue that this information is excepted from disclosure under section 552.103. However, this exception is a discretionary exception to disclosure that protects the governmental body's interests and is therefore not other law that makes information expressly confidential for purposes of section 552.022(a). *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision No. 551 (1990) (statutory predecessor to section 552.103 serves only to protect a governmental body's position in litigation and does not itself make information confidential). Therefore, you may not withhold the remaining responsive information under section 552.103 of the Government Code. As you make no additional arguments, the remaining responsive information must be released.

In summary, we conclude that the responsive information must be released pursuant to section 551.022 and 552.022 of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code

§ 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "W. Montgomery Meitler".

W. Montgomery Meitler
Assistant Attorney General
Open Records Division

WMM/sdk

Ref: ID# 206096

Enc: Submitted documents

c: Mr. Michael R. "Mickey" Milligan
Attorney at Law
600 Sunland Park Drive, Building 5, Suite 600
El Paso, Texas 79912
(w/o enclosures)